

Application No. 10/772,102

REMARKS

Claims 1-14, 16, 17, 27, 28 and 32-40 are pending. By this Amendment, claims 16, 28 and 32 are amended. Claim 18-26 are canceled without prejudice to advance prosecution of the application. Specifically, claim 16 is amended to remove an inadvertent inconsistency, and claim 18 is amended to correct an obvious typographical error. Claim 32 is amended to change its claim dependency in view of the cancellation of claim 18. No new matter is introduced by the amendments.

Claims 1-14, 23 and 33-37 are allowable. Claims 16, 17, 27 and 28 stand objected. Claims 18-20, 24-26 and 32 stand rejected. Applicants respectfully request reconsideration of the pending rejection and objection based on the following comments.

Comments Regarding Finality of the Office Action

The Examiner made the Office Action Final. With all due respect, this action was directly contrary to procedures under the MPEP. As stated in MPEP 706.07(b) (emphasis added):

However, it would **not be proper** to make final a first Office action in a continuing or substitute application where that application contains material which was presented in the earlier application after final rejection or closing of prosecution but was denied entry because (A) new issues were raised that required further consideration and/or search, or (B) the issue of new matter was raised.

Since the Advisory Action of October 20, 2005 had the box checked that the amendments raised new issues that required further consideration or search, the finality of this Office Action is clearly inappropriate and contrary to required practice under the MPEP. However, since the present pending claims have been found allowable, the issues seems to be presently moot.

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Objection to Claim 16

The Examiner objected to claim 16 for an informality. In particular, line 4 included the word metal even though metal had been deleted from the rest of the claim. Thus, metal did not have proper antecedent basis in the claim. Applicants thank the Examiner for a careful reading of the claim. The word "metal" has been deleted from claim 16. In view of the correction of claim 16, Applicants respectfully request withdrawal of the objection to claim 16. In view of the correction of claim 16, dependent claims 17, 27 and 28 should also be in condition for allowance.

Claim Rejection under 35 U.S.C. § 103

The Examiner rejected claims 18-20, 24-26 and 32 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 6,645,398 to Hampden-Smith, et al. (the Hampden-Smith patent). While Applicants respectfully disagree with the Examiner's characterization of the particle size distributions in the reference since they are expressed in different terms, Applicants have canceled claims 18-20 and 24-26 to advance prosecution of the application. Claim 32 was amended to depend from allowed claim 33. Thus, the rejection is presently moot. Applicants respectfully request withdrawal of the rejection of claims 18-20, 24-26 and 32 under 35 U.S.C. § 103(a) as being unpatentable over the Hampden-Smith patent.

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CONCLUSIONS

In view of the foregoing, it is submitted that this application is in condition for allowance. Favorable consideration and prompt allowance of the application are respectfully requested.

The Examiner is invited to telephone the undersigned if the Examiner believes it would be useful to advance prosecution.

Respectfully submitted,



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